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STATE OF WASHINGTON

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DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504-8711 • (206) 459-6000

June 15, 1992

Mr. Ron Izatt
U.S. Department of Energy
Post Office Box 550 A5-19
Richland, Washington 99352

Dear Mr. Izatt:

Re: ECOLOGY'S PERMITTING/REGULATORY AUTHORITY AT THE HANFORD FACILITY

References: Letter, Gary Anderson, Ecology, to R.W. Oldham, WHC, "Authority for Septic Tanks", dated August 5, 1991.

Letter, Robert C.H. King, Ecology, to Cliff Clark, USDOE-RL, "Re: 1) Controls for the New Source of Air Pollutants, 11233
2) Notice of Construction for Hanford Projects", dated October 10, 1991.

Letter, Willis Bixby, USDOE-RL, to Narda Pierce, Ecology, "SEPTIC SYSTEM APPROVAL AUTHORITY", dated November 19, 11567
1991.

Letter, R.D. Izatt, USDOE-RL, to Phil Cooke, Benton-Franklin-Walla Walla Counties Air Pollution Control Authority, and Steve Hunter, Ecology, "NOTICE OF CONSTRUCTION REVIEW AND APPROVAL AUTHORITY", dated January 31, 1992. 12122

Over the past few months, my staff and I have received a number of inquiries requesting clarification of state authority for permitting/approval of waste management systems on the Hanford site. This letter constitutes our response after review of this issue, and summarizes actions we are taking to ensure a coordinated approach to regulatory activities on the reservation.

Ecology was charged with responsibility as the sole state decision-making authority with respect to permitting and regulatory action at the Hanford facility during the 1985 legislative session. That authority is found at Chapter 70.105.240 RCW which states in part that:

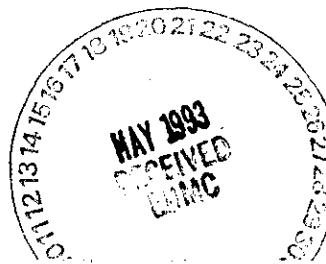
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"...(1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The Department of Ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any other state, regional or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter."

This statutory language is based on two specific definitions within the Hazardous Waste Management Act, those being that of a "facility", and of a "preempted facility" as follows:

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste. RCW 70.105.007 (11)

"Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill. RCW 70.105.007 (12)

The Hanford facility clearly meets the definition of both a facility and a preempted facility as above. The Hanford site is classified by both the U.S. Environmental Protection Agency and the Washington State Department of Ecology as a single facility (boundary to boundary) under its hazardous waste facility identification number WA 7890008967. Additionally, with the passage of Hanford's nuclear material's production mission, the site now stands as one whose mission focuses largely on cleanup and hazardous waste management, and as one whose activities include numerous examples of the waste management categories cited.

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Ecology also serves the critical function of the state's representative and coordinator with the federal government, its contractors, state and local governmental agencies, and the public as signator to the Hanford Federal Facility Agreement and Consent Order.

As one of our activities in fulfillment of this responsibility, we have been actively working with agencies such the Washington Department of Health in developing Memoranda of Understanding (MOU) which allow their staff to apply their expertise, but under conditions which ensure that our activities are coordinated with Hanford waste management and cleanup. Two specific MOU's which have recently been completed, focus on the management of on-site septic tank systems and radioactive air emissions. I am enclosing a copy of our Hanford Site Septic System MOU for your information. The second (Radioactive Air Emission Management) will be forwarded to you within the next few days. In parallel to these activities my staff have also begun working with Washington Department of Wildlife staff to ensure that Hanford cleanup activities take into consideration the need to address impacts on site fauna.

Please feel free to call me at (206) 459-6168, or Narda Pierce at (206) 459-6029, if you have additional questions.

Sincerely,



Chuck Clark
Director

CC:db
Enclosure

cc: Narda Pierce, Office of Waste Management
Roger Stanley, Department of Ecology
Phil Cooke, Benton-Franklin-Walla Walla, APCA
Kristine Gebbie, Department of Health
Eric Slagle, Department of Health
Curt Smitch, Department of Wildlife
Randy Smith, U.S. Environmental Protection Agency

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MEMORANDUM OF UNDERSTANDING

Between the

Washington State Department of Health

and the

Washington State Department of Ecology

Related to the

RESPECTIVE ROLES AND RESPONSIBILITIES OF THE TWO AGENCIES RELATED TO THE REVIEW AND APPROVAL OF SEPTIC TANK AND SEPTIC TANK DRAINFIELD SYSTEMS ON THE HANFORD RESERVATION

This memorandum of understanding (MOU) is made and entered into by and between the Washington State Department of Health (Health) and the Washington State Department of Ecology (Ecology) pursuant to the authority granted by RCWs 43.70.080 and 70.105.240.

I. Introduction

The Department of Health under RCW 43.70.080 and Chapter 246-272 WAC has authority to protect the public health as it may be impacted by on-site wastewater disposal systems. Increasing complexity of alternative and larger on-site septic waste disposal systems, continuing technology changes, groundwater and wellhead protection needs, and soil analysis requirements make it essential that permits for such systems be granted by public health professionals proficient in the design and approval of such systems.

The Department of Ecology was charged with responsibility as the sole (state) decision-making authority with respect to permitting and regulatory action at the Hanford facility during the 1985 legislative session. That authority is found at RCW 70.105.240, which states in part that:

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"....(1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The Department of Ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any other state, regional or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter."

Ecology is the state's representative during implementation of the Hanford Federal Facility Agreement and Consent Order (HFFACO) (May, 1989 as amended). Ecology also has broad authority which can be invoked under the state's Clean Water Act, Chapter 90.48 RCW. Contamination of Hanford site ground waters via septic tank systems would likely prompt such enforcement action. In addition, the regulatory requirements of the state waste water discharge permit system, Chapter 173-216 WAC, and the Underground Injection Well (UIC) program, Chapter 173-218 WAC, apply in specific groundwater contamination situations.

II. Purpose and Scope

It is the purpose of this MOU to establish a review and approval system for septic tank and drainfield systems on the Hanford Reservation that recognizes existing authorities and is consistent with their statewide application. Statewide septic systems with subsurface disposal and maximum design flows up to 14,500 GPD are regulated by Health with the exception of any system utilizing subsurface disposal which has received a federal or state construction grant. Health exercises their regulatory authority through a review and approval process associated with system "plan reviews".

For the purposes of this agreement, septic systems are defined as treatment systems which receive only domestic waste waters (e.g., "residential sewage", having the constituency and strength typical of wastewater from single family households). Industrial wastewaters, including those which may also contain domestic sewage, are regulated by Ecology. Septic systems with subsurface disposal and maximum design flows greater than 14,500 GPD are also regulated solely by Ecology.

III. Coordination and Cooperation Between the Two Agencies

Health and Ecology have a statutory responsibility to coordinate with each other to integrate efforts and endorse common policies (RCW's 43.70.310 and 43.21A.140). Coordination and integration currently occur through informal consultation/coordination, interagency committees/task forces, procedural agreements, and memoranda of understanding. Such memoranda and/or agreements remain in full force and effect.

IV. Agency Responsibilities Related to Review and Approval of Septic Tank and Drainfield Systems

Health and Ecology shall furnish the necessary personnel and services and otherwise perform all necessary actions for or incidental to the performance of the work set forth in this section, including all fiscal and program responsibilities.

Health and Ecology shall each maintain books, records, documents and other evidence which sufficiently and properly reflect the activities provided by this agreement. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. Health and Ecology will retain all books, records, documents and other material relevant to this agreement for five years after its expiration and the Office of the State Auditor, federal auditors, and any other duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

A. Department of Health

1. Health is hereby delegated responsibility for the issuance and/or oversight of construction approval, operation, maintenance, and inspection of Hanford site septic systems of capacity up to 14,500 GPD.

2. Health shall coordinate its review and approval activities with Ecology. The purpose of the coordinated review is to identify and mitigate potential impacts a proposed septic system may have on Ecology permitted facilities and/or clean up activities under the HFFACO.
3. Health shall require that septic systems proposed on the Hanford Reservation meet all requirements outlined within chapter 246-272 WAC.
4. Upon request, Health shall support actions taken by Ecology on the Hanford Reservation to enforce chapter 246-272 WAC, e.g., septic system denials or delayed approvals needed to support Ecology's actions in implementing the HFFACO.
5. Health shall bill the U.S. Department of Energy and/or their contractors for normal review costs incurred in the inspection, review, and approval of septic tank systems.

B. Department of Ecology

1. Ecology shall administer and enforce all permitting and regulatory functions on the Hanford Reservation in accordance with RCW 70.105.240 and this MOU.
2. Ecology shall ensure that the conditions contained in this MOU do not interfere with, or supersede, the requirements of the HFFACO.
3. Ecology shall review all proposed septic system plans for the Hanford Reservation to determine impact to cleanup at Hanford under the HFFACO. Upon a determination of no impact (or impact) Ecology shall, under the authority granted to Ecology by RCW 70.105.240, and the provisions of this Memorandum of Understanding, forward its comments to Health for disposition under responsibility delegated via this MOU.
4. Ecology shall designate a single contact, who together with Health's contact (George Schlender or his designee), will provide assistance and guidance necessary for the performance of this agreement.

V. Coordination and Cooperation

Because Health's principal responsibility is protecting public health, which includes considering environmental impacts on humans, and Ecology's environmental protection efforts often include a health component, the two agencies agree to support the provision of the agreement to further mutual coordination and cooperation with respect to septic tank systems on the Hanford Reservation.

Health and Ecology may amend this agreement by mutual consent. Such amendments shall not be binding unless they are in writing and signed by the Director of Ecology and the Secretary of Health or their delegates.

VI. Dispute Resolution

In the event that technical or policy disagreements arise between staff of the parties of this MOU, they shall be resolved at the lowest possible level. If resolution is not achieved, disputes shall be escalated sequentially to Program Managers/Office Chiefs, and to Assistant Directors/Assistant Secretaries. Deputy Directors shall have the authority to arrive at agreements if other managers are unable to achieve resolution.

VII. Effective Date

This Memorandum of Understanding shall be effective when signed by the two parties, may be amended by mutual consent, and may be terminated upon 30 days written notice by either party.



Kristine Gebbie, Secretary
Washington Department of Health

6/1/92
Date



Chuck Clarke, Director
Washington Department of Ecology

5/22/92
Date

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CORRESPONDENCE DISTRIBUTION COVERSHEET

Author	Addressee	Correspondence No.
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Subject: ECOLOGY'S PERMITTING/REGULATORY AUTHORITY AT THE HANFORD FACILITY

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